

REMARKS/ARGUMENTS

Entry of the amendment and reconsideration of this Application is respectfully requested. The Applicants affirm the election of group 2, species 2 and species 6, and claims 17 to 38. Claim 39 has been added with the present amendment. No new matter has been added with this amendment. Support for this amendment can be found at paragraph 00066.

35 U.S.C. §102 Rejections

Claims 17-25 and 28-38 have been rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent 5,380,299 to Fearnot (the Fearnot patent). This rejection is respectfully traversed. The Applicants have thoroughly considered Examiner Prone's remarks concerning the patentability of claims 17-25 and 28-38 over the Fearnot Patent. The Applicants have also thoroughly read the Fearnot Patent. In order for the Fearnot Patent to anticipate the invention as claimed in independent claims 1, 25 and 35, the Fearnot Patent must disclose, teach, or suggest each and every claimed element of the Applicants' invention, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Referring to claims 17, 25 and 35, the Fearnot Patent does not disclose, teach, or suggest, at least, a drug polymer layer having at least one therapeutic agent and a cured first polymer as claimed in claims 17, 25 and 35. At most, the Fearnot Patent teaches a stent having a multi-layer coating where the coating is allowed to air dry between coats (see col. 4 lines 11-16).

As each and every limitation of dependent claims 17, 25 and 35 is not disclosed in the Fearnot Patent, claims 17, 25 and 35 cannot be anticipated by the Fearnot Patent. Claims 18-24 depend from independent claim 17 and include all the elements and limitations of independent claim 17. Therefore, dependent claims 18-24 are allowable over the Fearnot Patent for at least the same reasons as set forth above with respect to independent claim 17. Claims 28-34 depend from independent claim 25 and include all the elements and limitations of independent claim 25. Therefore, dependent claims 28-34 are allowable over the Fearnot Patent for at least the same reasons as set forth above with respect to independent claim 25. Claims 36-38 depend from independent claim 35 and include all the elements and limitations of independent claim 35. Therefore, dependent claims 36-38 are allowable over the Fearnot Patent for at least the same reasons as set forth above with respect to independent claim 35. For these reasons, the

withdrawal of the rejection of claims 17-25 and 28-38 under 35 U.S.C. § 102(b) is respectfully requested.

New claim 39 depends from claim 17 and is allowable for at least the same reasons as stated above for independent claims 17.

35 U.S.C. §103 Rejections

Claims 26 and 27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fearnot '299 in view of Guruwaiya (US Patent 6,251,136).


The Applicants traverse this rejection. As the Examiner is well aware, in order to make a *prima facie* case of obviousness under § 103(a), all of the *claimed* elements of the invention must be taught or suggested by the prior art (MPEP § 2143.03). As discussed above, the Fearnot patent does not teach or suggest a drug polymer layer having at least one therapeutic agent and a cured first polymer as claimed in independent claim 25. Furthermore, neither the Fearnot patent nor the Guruwaiya patent, alone or in combination, teach or suggest a drug polymer layer having at least one therapeutic agent and a cured first polymer as claimed in independent claim 25.

Claims 26 and 27 depend from independent claim 25 and include all of the elements and limitations of independent claim 25 and, thus, are allowable for at least the same reasons as those stated above for claim 25. Furthermore, where an independent claim is non-obvious, any claim depending therefrom is also non-obvious. *See*, MPEP 2143. Applicants, therefore, request the withdrawal of the rejection of dependent claims 26 and 27 under § 103(a).

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-0221.

Respectfully submitted,



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